

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 1, Chama Mainstream

**MOTION TO LIMIT CONSIDERATION OF OBJECTIONS
TO SPECIAL MASTER'S REPORT FILED DECEMBER 16, 2009
TO PARTIES SUBJECT TO THE PRETRIAL ORDER
ON MAINSTREAM PRIORITIES FILED MARCH 25, 1996**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and moves the Court to limit the consideration of objections to the *Special Master's Report and Recommendations on Priorities for Three Acequias* filed December 16, 2009, to the parties subject to the *Pretrial Order on Mainstream Section Priority Dates* filed March 25, 1996, and as grounds thereof states the following:

1. Special Master Vickie L. Gabin held hearings on the disputed priorities of the Acequias de Chamita, Hernandez and Los Salazares ("Acequias") in the Chama Mainstream Section of the Rio Chama Stream System between August 14 and August 19, 1996. These proceedings were governed by the *Pretrial Order on Mainstream Section Priority Dates* filed March 25, 1996 (Doc. 5348) ("Pretrial Order"). On December 16, 2010, the Special Master filed her Report on the disputed priorities of the Acequias. *See Special Master's Report and Report and Recommendations on Priorities for Three Acequias* filed December 16, 2009, (Doc. 9546) ("Report").

2. The Acequias de Chamita, Hernandez and Los Salazares, by and through their counsel of record, Fred J. Waltz, filed their *Motion to Adopt Special Master's Report and Recommendations on Priorities for Three Acequias* on January 7, 2010 (Doc. 9556).

3. After having been granted an extension of time (See Order filed January 12, 2010, Doc. 9559) the State of New Mexico filed its *Motion to Adopt, In Part, to Modify and Objections To Special Master's Report on Priorities for Three Acequias* on February 20, 2010 (Doc. 9597).

4. Numerous other persons, acting *pro se*, have filed objections to the Special Master's Report. See Jacobo Baca (Doc. 9588); Tina C. Garcia (Doc. 9589); Eloy J. Garcia (Doc. 9590); David Ortiz (Doc. 9591); Ron W. Rundstrom (Doc. 9592); Pedro D. Trujillo (Doc. 9593); Leandro Dominguez (Doc. 9596); Ernesto Mascarenas (Doc. 9598); Larry Pacheco (Doc. 9599); Jose Elias Archuleta (Doc. 9600); Morris Santistevan (Doc. 9601); Juan D. Archuleta (Doc. 9602). By Order filed February 23, 2010 (Doc. 9603), the Court granted the motions of the first six persons listed above for an extension of time to file amended objections to the Special Master's Report.

5. The Pretrial Order filed March 25, 1996, states that "These proceedings shall involve only the State, the aforesaid Acequias and any pro se parties who have properly filed objections to the Notices and Orders to Show Cause." Pretrial Order at 4. Of the parties listed above in paragraph 4, only Ron W. Rundstrom, Eloy J. Garcia and Juan D. Archuleta filed an objection to the State's proposed priority dates for their water rights. See *Objections to Orders to Show Cause* filed December 7, 1994; Eloy J. Garcia (Doc. 3974.15); Ron W. Rundstrom (Doc. 3974.19); Juan D. Archuleta (Doc. 3974.13). Persons that timely filed objections to the State's proposed priority dates

for the three acequias are correctly listed in the service list attached to the Pretrial Order.¹ The objections of these persons are listed in the Court's docket at 3974.3–19, and 3993.1. The State understands that these persons filed their objections on their own behalf, and that at no time during the proceedings were they represented by counsel, including representation by the attorney representing the three Acequias (Fred J. Waltz). *See Transcript of Proceedings* March 12, 1996 (Pretrial Conference), 15-19, attached hereto as Exhibit 1.

6. Persons that did not timely file objections to the Notices and Orders to Show Cause were not allowed to participate in the hearings on the disputed priority dates, either *pro se* or appearing through counsel, and should not now be allowed to file objections to the Special Master's Report. The Pretrial Order reviews the procedural history of these proceedings and indicates that during the last months of 1994 and the early months of 1995 the State served individual defendants with the Court approved form of Notice and Order to Show Cause concerning the proposed the priority dates for the three Acequias through regular mail and by publication. Pretrial Order at 1-2; *see, e.g. Notice of Entry and Certificate of Service*, filed October 12, 1994 (Doc. 3526); *New Mexico's Certificate of Service of Publication for Priority Date Notices and Orders to Show Cause*, filed November 29, 1995 (Doc. 4413). Publication of the Notice and Order to Show Cause was directed to "ALL CLAIMANTS, KNOWN AND UNKNOWN, WHO CLAIM A RIGHT TO USE SURFACE WATERS OF THE RIO CHAMA SYSTEM, CHAMA MAINSTREAM SECTION" in addition to the various named defendants for whom a correct mailing address could not be located.

¹ This list includes two persons (Abel Herrera, Peter L. Fresquez) who filed Objections to the proposed priority date for water rights under the Acequia de Jose V. Martinez. (Doc. 3974.1–2). These *pro se* parties did not need to be included on the service list and the Court need not be concerned with them here.

Both the mailed notices and the published notice stated that “if you object to the priority date stated above and want to offer proof of an earlier date, you must file a written objection with the Court.” *Id.* (emphasis added); *see also State’s Motion for Approval of Form of Order to Show Cause*, filed September 15, 1994 (Exhibit A, proposed form of notice and order to show cause) (Doc. 3512) (approved by Order filed October 3, 1994 (Doc. 3521)). In the absence of a timely objection to the State’s proposed priority dates, an owner of water rights under the three Acequias had no right to participate and to present evidence at the hearings to establish a priority dates earlier than the one proposed by the State, and those persons should not now be allowed to file objections to the Report by the Special Master, or to present new evidence or argument that might have been presented to the Special Master at the hearings held in 1996.

7. The State points out that it appears that the Special Master’s Report was not served on the *pro se* parties that filed timely objections to the Court’s Notice and Order to Show Cause. *See* Notice of Electronic Filing (Doc. 9546), attached hereto as Exhibit 2 (no persons identified that were served with a copy of the Report by United States Postal Service). Under Fed. R. Civ. P. 53(e), the Special Master is required to promptly serve a copy of her report on each party unless the Court directs otherwise. The State believes that a copy of the Special Master’s Report should be served on all of the *pro se* parties identified in the Pretrial Order. Parties so served will have 21 days from the time the Report is served to file objections to the Report, or a motion to adopt or modify the Report, unless the Courts sets a different time. Fed R. Civ. P 53(f)(2).

WHEREFORE, the State of New Mexico requests that the Court enter an Order that limits the consideration of objections to the Special Master’s Report filed December 16, 2009 (Doc. 9546) to the parties subject to the *Pretrial Order on Mainstream Section Priority Dates* filed March 25,

1996 (Doc. 5348); further, the State requests that the Court or the Special Master serve a copy of the Report on the *pro se* parties identified in the Pretrial Order as described above.

Respectfully submitted,

/s/ Ed Newville
EDWARD G. NEWVILLE
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Office of State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 867-7444 phone
(505) 867-2299 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of February, 2009 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Objections to Notice and Order to Show Cause Filed With Court (1994/95)

Willie A. Martinez
P.O. Box 1909
Española, NM 87532

Henry (Enrique) C. Salazar, Jr.
Viola G. Salazar
P.O. Box 542
Española, NM 87532

Donald R. Tittsworth
Lynn Cravens
P.O. Box 4542
Fairview, NM 87533

C. Paul Martinez
Rt. 2, Box 320
Española, NM 87532

Arthur R. Trujillo
P.O. Box 295
Española, NM 87532

Leonard Valerio
P.O. Box 1961
Española, NM 87532

Arturo A. Martinez
P.O. Box 1568
Española, NM 87532

Phil V. Sanchez
P.O. Box 292
Española, NM 87532

Joe L. Maestas
P.O. Box 63
Hernandez, NM 87537

A. B. Valdez
P.O. Box 4425
Fairview, NM 87533

Juan D. Archuleta
P.O. Box 2
San Juan Pueblo, NM 87566

Pete Trujillo
Lorraine V. Trujillo
P.O. 1215
San Juan Pueblo, NM 87566

Eloy J. Garcia
P.O. Box 1024
San Juan Pueblo, NM 87566

Kenneth C. Martha
P.O. Box 1059
San Juan Pueblo, NM 87566

Jose Fidel Trujillo
P.O. Box 1268
San Juan Pueblo, NM 87566

Richard M. Salazar
P.O. Box 1330
San Juan Pueblo, NM 87566

Ron W. Rundstrom
P.O. Box 1791
Española, NM 87532

Bonefacio I. Vasquez
1713 W. Shadow
Española, NM 87532

No Objections to Notice and Order to Show Cause Filed with Court (1994-95)

Jacobo Baca
P.O. Box 1045
San Juan Pueblo, NM 87566

Tina C. Garcia
P.O. Box 1304
San Juan Pueblo, NM 87566

David Ortiz
P.O. Box 1082
San Juan Pueblo, NM 87566

Pedro D. Trujillo
P.O. Box 1219
San Juan Pueblo, NM 87566

Leandro Dominguez
1416 Crespin Dr.
Pacifica, CA 94044

Ernesto Mascarenas
P.O. Box 1058
San Juan Pueblo, NM 87566

Larry Pacheco
P.O. Box 1153
San Juan Pueblo, NM 87566

Jose Elias Archuleta
Mary S. Archuleta
P.O. Box 1540
San Juan Pueblo, NM 87566

Morris Santistevan
P.O. Box 4516
Fairview, NM 87533